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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 August 1999, at 6 p.m.

Chairman: Mr. HATANO

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The meeting was called to order at 6.05 p.m.

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(agenda item 12) (continued) (E/CN.4/Sub.2/1999/23, 24, 26, 27, 28 and Corr.1, 29, 32, 34, 38 and 39; E/CN.4/Sub.2/1999/NGO/5)

1. Ms. OLIVIER (European Union of Public Relations) said that terrorism was emerging as the prime violator of human rights. As if Kalashnikovs and bombs were not destructive enough, nuclear terrorism appeared to be about to become a reality. Supporters of Osama Bin Laden were reported to have said that their leader had obtained chemical and nuclear weapons, and individuals who should be more responsible had called for the free sale of nuclear weapons technology. The justification of terrorism in terms of religious ideology was a particularly potent threat to mankind; calls for jihad in Pakistan plus nuclear weapons capability presented an explosive and destructive mix.

2. It was equally disheartening that the principles of apartheid seemed to apply to combating terrorism. When a white person was killed by a terrorist group retaliatory action was swift, yet groups that routinely massacred innocent civilians in developing countries - groups like the LTTE, the Jammu and Kashmir Liberation Front, and the Babbar Khalsa - were allowed to function overtly from offices in developed countries. While the

Harkat ul Ansar had kidnapped and killed poor Indians, the United States had followed a business-as-usual policy towards Pakistan; it had not banned that organization until Western tourists, including an American, had been kidnapped.

3. The Government of Pakistan provided land and facilities to terrorist groups intent on waging war against India, and such groups, affiliated with political parties, ran offices, held press conferences and advertised in newspapers seeking funds for weapons to fight India. No one inquired into the sources of their financing or the right by which they used the soil of one ostensibly democratic country to advocate the dismemberment of another.

4. Fundamentalist narco-terrorism was also a major enemy of human rights. Fundamentalism recognized no creed but its own, and civilized societies were ill-equipped to do battle with such groups. For democratic nations a new corpus of laws was essential to deal with modern-day terrorists, as existing laws simply placed them behind bars for a few years with the option of release to continue their activities. If human rights were to be preserved, terrorism must be rooted out.

5. Ms. GRAF (Society for Threatened Peoples), speaking also on behalf of the International League for the Rights and Liberation of Peoples (LIDLIP), said that in spite of United Nations efforts much remained to be done in practice to counter the diversification of terrorism as referred to in General Assembly resolutions 51/210 and 50/53. She welcomed Ms. Koufa's constructive preliminary report on terrorism and human rights (E/CN.4/Sub.2/1999/27), and hoped that the next report would delve further into the question of the social break-up which affected the statehood of several countries and the use of mercenaries by the major Powers.

6. Terrorism was a complex act linked to other crimes, such as drug and arms trafficking, and was most often perpetrated with the complicity of States. Although a distinction must be made between State terrorism and terrorist groups, the responsibility borne by the State in the first case should not be forgotten and States must be reminded of their international commitments.

7. The establishment of a world order of fundamental rights entailed not only creating binding norms but implementing them effectively. Unfortunately, the voting records in the adoption of Commission on Human Rights resolution 1998/47 and Economic and Social Council resolution 1998/278 clearly showed States' lack of political will to efficiently combat all forms of terrorism. The resolution of conflicts by armed force and terror rather than dialogue and negotiation threatened international peace and security and required urgent international cooperation. States must refrain from training terrorists or financing terrorist activities.

8. Action against terrorism began with the publicizing of terrorist acts, the prosecution of those involved and their accomplices, and the acceptance of responsibility by the State or governmental authorities in question. In the case of Turkey, recent scandals had revealed the complicity of high-ranking military and political officials in terrorist activities. Ousama Bin Laden, the terrorist par excellence, had originally been trained by the CIA. In

conclusion, her organization firmly condemned the suicide-bomber killing of renowned constitutional lawyer Neelan Thiruchelvam in Sri Lanka on 29 July 1999.

9. Mr. WILKES (Consultative Council of Jewish Organizations), speaking also on behalf of the Coordinating Board of Jewish Organizations and the World Union of Progressive Judaism, drew attention to recent events in Iran, and in particular the bulldozing of a Jewish cemetery, which suggested that the Jewish community was being terrorized by hostile elements within the State. He stressed that he was in no way attacking the authorities of the Islamic Republic of Iran, who since the time of Ayatollah Khomeini had shown serious concern for the security of the Jewish community. The incident in question was a reminder of the irrational hatred of Jews in some sections of contemporary Iranian society, against which the judges in the case must reach an objective decision. There was a section of Iranian society which did not distinguish between Zionists and Jews; it was, for example, regrettable that the official press agency, IRNA, regularly referred to foreign Jews and Jewish organizations as Zionist.

10. Allegations of Zionist espionage had in the past provided fuel for hate-mongering in Iran, and the trials of "Zionist spies" had still not provided any public evidence of espionage within the Jewish community. Indeed, it would be foolish for real Zionist spies to try to work with Iranian Jews, who would be the first group suspected if any real espionage was detected. He welcomed the efforts of the Iranian authorities to tell the international community that the accusation of Zionist espionage did not relate to the maintenance of Jewish religious activity. He hoped they would also explain that such charges did not relate to communication with other Iranian Jews outside the country. To ensure that the trial was not used by extremists to destabilize Iran, he supported the proposal to appoint a United Nations observer recommended by the Special Rapporteur on Iran and agreed to by the Iranian authorities.

11. Attacks on Jewish communities in other countries had led to major police investigations and had also drawn Muslims, Christians and Jews together in solidarity and condemnation of such acts. Not to condemn might in such circumstances be to condone. He believed that Iranian political and religious leaders would want to convey their support to the Jewish community at a time when elements within the Iranian State were attempting to stir up hatred against Jews. During the discussion of agenda item 8, his organization had welcomed the Iranian President's proposed "dialogue of civilizations" as a forum for demonstrating real concern for the protection of minorities. He hoped that the representatives of the Islamic Republic of Iran would respond to his statement, which was a call for dialogue and solidarity.

12. Mr. MAHINDAPALA (World Fellowship of Buddhists) said that the violence inherent in terrorism was antithetical to the fundamental tenets of Buddhism. It was, however, appropriate to review the item on the basis of the Special Rapporteur's invaluable report on terrorism and human rights.

13. The significance of Ms. Koufa's report lay in the paradigm shift from the State as the sole instigator and perpetrator of terrorism to non-State actors. In underscoring the impact of terrorism on human rights, the report

filled a lacuna which violent organizations had exploited to violate human rights while parading under fashionable political labels. The immoral exploitation of the word "liberation" in such organizations' titles to justify terror politics could not be dismissed as mere semantics, but had serious consequences for human rights. The liberal scholar Mr. Neelan Tiruchelvam was the latest in a long line of defenders of peace, democracy and human rights to be murdered by the LTTE in the name of "liberation".

14. The report stated that terrorist acts and methods utilized to coerce others from a free choice and full participation in the political process offended democratic society; the LTTE terrorists who had murdered Mr. Tiruchelvam fitted that description in every detail. He hoped the report would pave the way for a better future for peace, democracy, humah rights and non-violent politics.

15. Mr. BARRY (International Federation of Human Rights) said that his organization welcomed Ms. Hampson's working paper (E/CN.4/Sub.2/1999/28) on reservations formulated by States when ratifying international human rights treaties; it admirably summarized the problems involved in that practice and proposed a plan of action for the future which deserved consideration by the Sub-Commission and Commission.

16. The rules governing reservations were inappropriate, particularly in regard to human rights treaties. The articles of the Vienna Convention on the Law of Treaties which related to reservations derived from the principles laid down by the International Court of Justice in its judgement concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, at a time when obtaining universality had appeared to be a priority. As the Court itself had recognized, however, those principles bound States over and above any treaty obligation. It was because human rights were not treaty-linked that reservations to human rights treaties raised problems: there was a need to review international law on the subject and Ms. Hampson's proposals met that need.

17. FIDH condemned terrorist crimes and agreed with the Special Rapporteur that the State was responsible either for acts attributed to it or for failure to protect its citizens against such acts. Terrorist acts unrelated to the State should be dealt with under national criminal legislation and the currently-developing body of international criminal law, and international judicial and police cooperation should be stepped up to combat any form of transnational criminality.

18. Mr. AL-DOURI (Observer for Iraq) said it was a well-known fact that certain countries had the power to use human rights mechanisms for political purposes by interfering with the treatment of subjects within the competence of other United Nations bodies, such as the Security Council. There was a reluctance, on the part of countries and experts in general, to address the impact of certain United Nations measures in the field of human rights, and in particular the adverse consequences of economic embargoes. He supported the course taken by the Sub-Commission in that area, but suggested that the title of agenda item 12 (b) (i) should be amended since, by their very nature, humanitarian activities could not be contrary to human rights.

19. The situation in Iraq was a sad example of the adverse impact of certain United Nations measures. Everyone, including members of the Sub-Commission, knew the extent to which individual and collective human rights in Iran had suffered owing to the Security Council resolutions, which prevented other United Nations bodies from playing their humanitarian role in protecting the people from the genocide they were experiencing as a result of the insistence of two countries on maintaining the embargo. He also regretted that the daily air attacks by the United Kingdom against Iraq and the violation of Iraqi sovereignty had aroused little concern among the international community, despite their serious repercussions for human rights. It was extraordinary to see United Nations human rights bodies avoiding any mention of the parlous humanitarian situation of the Iraqi people. On the tenth anniversary of the Convention on the Rights of the Child, nothing was said of the suffering of 1 million Iraqi children, and the Committee on the Rights of the Child had neither accepted Iraq's invitation to visit the country nor appealed to the Security Council to protect the children.

20. Thanks to its experience and the objectivity of its members, the Sub-Commission was in an excellent position to rectify the situation resulting from decisions of other United Nations bodies.

21. Mr. MERIC (Observer for Turkey) said that, on the eve of the next millennium, terrorism was cutting across national boundaries and causing enormous anguish throughout the world, its effectiveness increased by new political circumstances and modern technological advances. Because of time constraints, he would concentrate on ethnic terrorism, which seemed to have become an outlet for ethnic grudges.

22. Ethnic terrorism differed considerably from violence perpetrated for ideological or religious motives. Its transcending motive was to forge a distinct ethnic identity and foster ethnic mobilization through violence. Its twofold effect was to ensure ethnic homogenization and financial support, and to cleanse other ethnic elements from a particular territory. It used all types of organized crime, including drug trafficking, extortion, arson and money laundering, to attain its goals.

23. Although terrorism still lacked an agreed definition, its impact on society and the State was so debilitating that urgent and effective action by the international community was needed. In that regard, every member of the international community had an obligation under Article 4 of the Charter of the United Nations not to provide a safe haven or impunity for terrorists.

24. His delegation welcomed the Special Rapporteur's preliminary report (E/CN.4/Sub.2/1999/27) and shared her views concerning the link between terrorism and human rights protection, which had caused it to take the lead in drafting the Commission on Human Rights resolutions on the topic. As to the two essential questions raised by the Special Rapporteur in her report, his Government strongly believed that non-State actors had a secondary erga omnes responsibility for the protection and promotion of human rights and that terrorism was a violation of human rights. The only point which the report failed to address was the question of the impunity accorded by some States to terrorists; he reminded the Special Rapporteur that Commission resolution 1999/27 requested her to give attention to that question.

25. Mr. HETTIARACHCHI (Observer for Sri Lanka) expressed his appreciation to the Special Rapporteur for her excellent report on terrorism and human rights; the completed study would be a fitting contribution to action on what the Secretary-General of the United Nations had described as a "supranational subversive threat" to peace and security. The report was quite correctly based on the principles outlined by the General Assembly and, especially, on the Vienna Declaration and Programme of Action, which substantiated the dangers of terrorism for human rights. He agreed with the Special Rapporteur's observations concerning the problems of the legal accountability of non-State actors. Rather than seek legalistic solutions to those issues, he encouraged the Special Rapporteur to examine practical measures of international cooperation to prevent, discourage and eventually eliminate the "life-support systems" available to the perpetrators of terrorism.

26. Much remained to be done in order to incorporate the issues identified into a comprehensive study which would serve as a basis for action against the scourge of terrorism. In completing that task, all participants must ensure that no recognition was given to terrorist entities in the context of international human rights law or machinery. His delegation would continue to support the valuable analytical work being done by Ms. Koufa. The recent murder by LTTE terrorists of a human rights defender in his country was a stark reminder of the urgency of the task.

27. Mr. HASSAN (Observer for Pakistan) said that the issue of terrorism was a complex one. First, no general definition of terrorism existed, and secondly, terrorism must be differentiated from armed struggle for the right of self-determination. The Special Rapporteur had clearly established a link between terrorism and human rights violations in fact and in law. Terrorism directly and indirectly threatened the life, liberty and dignity of individuals.

28. He agreed with the Special Rapporteur that terrorism posed a threat to a democratic society. However, that statement needed to be qualified. The concept of a democratic society must not be misused, as was done by Indian government-organized non-governmental organizations, in order to engage in tirades against Pakistan while conveniently forgetting the relentless Indian State terrorism being waged in Kashmir.

29. By definition, a democratic and pluralistic society could not exist in a territory occupied by a foreign Power. "Elections" organized by such a Power could not restore democracy because the peoples concerned had not had the chance to determine their own political future. Therefore, efforts to end foreign occupation and its accompanying violent repression were acts of self-defence by occupied peoples and could not be said to undermine a democratic society. The study would be incomplete if it failed to make that important distinction. In that connection, he referred the Special Rapporteur to the Final Document of the Conference of Heads of State or Government of Non-Aligned Countries, which clearly differentiated national liberation struggles from terrorism. The study would also be enhanced if it paid due regard to the language of the General Assembly agenda item on terrorism.

30. Mr. SABHARWAL (Observer for India) said that a comprehensive study of the impact of terrorism on human rights was long overdue, as acts of

terrorism continued to occur despite national and international efforts. Debate on the subject remained confused and inconclusive, partly because of genuine conceptual inadequacies, but to a much greater extent because of the misleading propaganda of the State and non-State actors who sought to conceal their self-serving violent agenda behind lofty principles such as "self-determination".

31. He congratulated the Special Rapporteur on her excellent preliminary report (E/CN.4/Sub.2/1999/27), which demonstrated the impact of terrorism on individual freedoms and on social peace and public order. He agreed with the need to examine the scope of application of international human rights law and the accountability of non-State actors. The current approach to the question needed to be corrected, as it failed to address terrorist abuses and placed undue emphasis on the human rights of terrorists.

32. Organized terrorism promoted by certain States as an instrument of foreign policy was very different in scale, nature and consequences from the actions of stray individuals and groups. His country had been the victim of brutal manifestations of terrorism from a neighbouring country which nurtured territorial ambitions towards the Indian State of Jammu and Kashmir. That country was waging a proxy war against India, which included the operation of training camps for terrorists in territories under its control, the supply of sophisticated weapons and explosives to them, the financing of terrorist organizations, and infiltration of terrorists into India for terrorist outrages. The proxy war had caused untold misery and posed a serious challenge to the democratic, secular and pluralistic fabric of Indian society.

33. Having itself been the victim of terrorism, India was eager to promote international efforts to combat it, and had already called for a comprehensive international convention on terrorism which would make a significant contribution to human rights law by addressing the link between terrorism and the denial of human rights. He looked forward to the Special Rapporteur's final report and hoped that it would become an important landmark in the struggle of the international community against terrorism.

34. Mr. MEHEDI thanked the Special Rapporteur for her excellent report (E/CN.4/Sub.2/1999/27). In a world characterized by instantaneous communications, rapid technological development and ease of travel, modes of perpetrating international terrorism had increased. At the same time, the viciousness of the attacks had grown due to progress in weaponry and explosives technology. Terrorist groups were increasingly sophisticated, and certain Governments played the dual role of arsonist and fireman by helping terrorists gain access to chemical weapons and other extremely sophisticated and dangerous material. Despite the considerable resources devoted to action to combat terrorism, there had been a proliferation of such acts over the past decade.

35. As the report clearly showed, the first attempts to develop international mechanisms and treaty provisions to combat terrorism dated from before the Second World War; the protocol to the Convention for the Prevention and Punishment of Terrorism, adopted under the auspices of the League of Nations on 16 November 1937, contained the statute of an international criminal court. Since then, many regional conventions had been adopted with

a view to combating international terrorism, each containing a different definition of terrorism. Unfortunately, the sound definition provided in the Statute of the International Criminal Court had been removed from the categories of crime covered in that Statute.

36. From a methodological standpoint, he would prefer work on the topic to focus on "terrorism and human rights", as outlined in part II of the Special Rapporteur's report. He disagreed with the classification of terrorism as an ordinary crime. He did not think an ordinary offence such as theft or non-fulfilment of a contract should be compared with international terrorism.

37. In conclusion, he said it was immaterial who sponsored the paper referred to in Sub-Commission decision 1998/155; the goal was to find ways of raising States' awareness of the need to accede to international human rights instruments.

38. Mr. EIDE said that there were three main questions to be addressed in connection with Ms. Koufa's report (a) the definition of terrorism; (b) the question whether terrorism was a human rights issue; and (c) if so, what means were available under the human rights agenda for addressing it.

39. With regard to the definition of terrorism, he agreed that analytical exploration was needed in the next report. Was it governed by the nature of the act, its pattern the actors involved government-linked elements or non-State actors inside or outside a country or the target of the act? It was clear that terrorism had an impact on human rights; the crucial question was whether non-State actors, as well as States, could be held accountable for their acts under human rights law. In his view, they could and should be held accountable under domestic criminal law, universal jurisdiction or international criminal tribunals. Beyond that, they must be held morally accountable.

40. Assuming that terrorism was a human rights issue, what were its implications? When the acts were committed by State actors or through neglect by the State, a wide array of mechanisms existed to address them. When the acts were committed by movements beyond government control, efforts should be made by NGOs and others to pressure them to desist.

41. Finally, everyone must be aware of the dangers of misuse of the debate on terrorism. States must not be able to escape criticism for violating human rights even if they faced terrorist acts, since such acts at times derived from their own actions. A complex dynamic was involved.

42. Ms. KOUFA thanked the previous speakers for their constructive comments, which would be duly considered in the progress report, and for their understanding of the complexity and difficulties involved in her mandate. In view of time constraints, it was not possible to respond to all the comments; she requested that more time should be allotted to discussion of the topic at the Sub-Commission's fifty-second session. She thanked the various NGOs and observer Governments for their contributions to the discussion, and concluded by asking to be included among the special rapporteurs who received through the Secretary-General information on the implications of terrorism for the full enjoyment of human rights.

43. Ms. HAMPSON welcomed the comments and encouragement she had received on her paper (E/CN.4/Sub.2/1999/28). She pointed out that the purpose of the annex was simply to indicate the number of reservations and to show whether they were evenly spread among provisions and whether they related mainly to procedural or substantive provisions. Replying to a question by Mr. Joinet, she said that the question had originally arisen in response to interest shown by the Committee on the Elimination of Racial Discrimination. In response to a question by Mrs. Warzazi, she said the Convention on the Rights of the Child provided for reservations in article 51, but generally speaking, reservations to a treaty were permitted only if they were compatible with the purposes of the treaty, whether or not they were specifically provided for. She agreed with Mrs. Warzazi on the policy dilemma referred to in paragraph 25 of the report.

44. Although States exercised sovereignty in ratifying treaties, they could not plead sovereignty to act as they wished. Mr. Mehedi had referred to the Statute of the International Criminal Court as making sovereignty subject to international criminal law. She pointed out that the court's jurisdiction included crimes against humanity; in other words, sovereignty was subject to the fundamental human rights obligations of States. She concluded by endorsing Ms. Koufa's call for more time to be set aside for the discussion of reports at the fifty-second session.

45. Mr. RAMISHVILI expressed appreciation for the comments received in connection with Mr. Kartashkin's paper (E/CN.4/Sub.2/1999/29); they would be taken into account in the following report. Mr. Kartashkin would be present at the fifty-second session to discuss the paper. It was logical for the Sub-Commission, whose mandate lay at the heart of human rights issues, to seek new mechanisms and measures in order to achieve observance of international human rights standards. It stood to benefit from dynamic cooperation with States and NGOs, which he encouraged to submit written observations. He hoped the secretariat would study closely the question of the time needed to study the reports, especially the very complex initial reports.

46. Mr. HUSSAIN (Observer for Iraq), speaking in exercise of the right of reply, criticized the statement of one NGO, which held itself up as impartial and objective but had targeted Iraq more than once. He wondered whether that was because that NGO was the successor of another NGO which had been making insulting remarks about Iraq since the 1980s or because it was financed by Governments hostile to Iraq. Everyone knew that the United States had devoted $97 million to supporting the Iraqi opposition. However, it had not said a single word in favour of the Iraqi people, including 1 million children, who were subjected to continual bombing in both the north and south of the country, in what amounted to genocide.

47. Mr. AL-HADDAD (Observer for Bahrain), speaking in exercise of the right of reply, said that one NGO had taken the floor to utter its customary lies about his country, lies that originated from extremist groups which did not have his country's interests at heart. Because of its policy of transparency and the cohesion between its leadership and people, Bahrain was fully capable

of achieving further progress in the field of human rights. It had endeavoured to place human beings at the centre of all its development policies and objectives. He thanked the Chairman and all the members for their understanding and cooperation, and said that his Government would continue to strive to attain its objective of promoting human rights.

48. Ms. JANJUA (Observer for Pakistan), speaking in exercise of the right of reply, said that Indian government-organized NGOs came to the Sub-Commission to spread falsehoods and distribute documents which demonstrated nothing but their deep hatred of Pakistan. The Indian delegation could hardly take the floor concerning Kashmir because it simply had no case. The government-organized NGOs had been sent to the Sub-Commission with the express purpose of blurring the distinction between the Kashmiri people's genuine struggle for self-determination and terrorism, and making vicious and gratuitously insulting statements against Pakistan. Their presence was part of a massive and systematic disinformation campaign by the Indian State against the Kashmiris and her country.

49. The Indian State ran one of the most sinister and extensive terrorist machines in the world. It used terrorists to assassinate Kashmiri leaders and rewarded them with government jobs in the Indian Border Security Force and other paramilitary units. Could it deny, in the face of documented information, the extrajudicial executions, torture, disappearances, violence against women and collective punishments by the Indian State machinery in Indian-occupied Kashmir? In that connection, she quoted Human Rights Watch Asia to the effect that the Indian Government attempted to discredit militant organizations in Kashmir by claiming that the uprising had been provoked by Pakistan and was not indigenous in origin.

50. In their scurrilous, fabricated material attacking Pakistan, the Indian-paid NGOs had defaced Pakistan's national flag and even attacked Islam by disfiguring the crescent. The right to freedom of expression did not include offences against the emblem of a sovereign nation; the Sub-Commission must not allow such attempts to spread national and religious hatred to go unchecked.

51. If the NGOs in question had been genuinely concerned about human rights, rather than serving as foreign policy tools of the Indian Government, they would have said at least a few words about the abysmal human rights situation in India and Indian-occupied Kashmir during the past nine years. Their silence amounted to their confession. In a year which had seen 3,000 reported terrorist attacks, 2,000 had been directed against Pakistan, thanks to its neighbour.

52. Mr. SABHARWAL (Observer for India), speaking in exercise of the right of reply, said that his delegation categorically rejected the Pakistan delegation's allegation that certain NGOs which had criticized Pakistan's dismal human rights record had been doing so at the behest of his Government. It was ironical that a Government which tirelessly pursued its anti-Indian agenda in innumerable forums should become so rattled by criticism directed

against itself. And he was amazed at Pakistan's tenacity in clinging to its canard of indigenous struggle in the Indian State of Jammu and Kashmir, which had been exposed time and again. He wondered how long Pakistan would continue its by now thoroughly-discredited effort to conceal its deep involvement with terrorism as a tool of its foreign policy and territorial designs.

53. Ms. JANJUA (Observer for Pakistan), again speaking in exercise of the right of reply, said the fact that the delegation of India had taken the floor in support of government-organized NGOs was self-explanatory.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/1999/L.5-L.7, L.12/Rev.1 and L.15-L.19)

Draft resolution E/CN.4/Sub.2/1999/L.16

54. The CHAIRMAN recalled that two amendments to draft resolution L.16 had been rejected and that a proposal by one of the sponsors, Ms. Hampson, to delete the annex had been adopted.

55. Mrs. WARZAZI, referring to rule 62 of the Sub-Commission's rules of procedure, requested a separate vote concerning the deletion of the following phrase, which began on the third line of the eighth preambular paragraph: "the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America and Yemen, of which 10 occurred in the United States".

56. Ms. HAMPSON said that the question raised by Mrs. Warzazi had already been put to the Sub-Commission in the form of a vote on an amendment. Furthermore, only the day before she had received relevant news regarding the preambular paragraph in question: an Iranian newspaper had reported the execution on 18 August 1999 of a 20-year-old man for a crime committed at the age of 15, in 1994.

57. Mrs. WARZAZI noted that the young man in question had been executed at the age of 20. She was fully within her rights in requesting a separate vote on the eighth preambular paragraph.

58. Ms. HAMPSON explained that the person executed had been 15 years old at the time the offence had been committed.

59. Mr. GUISSÉ said that the salient age was age at the time of commission of the offence rather than age at the time of execution of the sentence.

60. Mr. BOSSUYT, referring to rule 55 of the rules of procedure, said that Mrs. Warzazi's proposal had already been voted on and rejected. The deletion of the phrase in question would constitute discriminatory treatment.

61. Mr. ALFONSO MARTINEZ pointed out that Mrs. Warzazi was not requesting a new vote on her earlier proposal, but a separate vote on a part of the draft resolution under review.

62. Mr. EIDE said he would appreciate knowing the difference between Mrs. Warzazi's earlier proposal, which had been rejected, and the proposal which she was now making.

63. Mr. YIMER, replying to Mr. Boesuyt, said that rule 55 was inapplicable, as it must be understood as covering draft resolution L.16 as a whole.

64. Mrs. WARZAZI, replying to Mr. Eide, said that her earlier proposal had been an amendment; she was now proposing a separate vote on the phrase in question.

65. Mr. BOSSUYT recalled that, in deciding the order in which it would vote on the proposals concerning draft resolution L.16, the Sub-Commission had applied rule 65 of its rules of procedure, which spoke of proposals, rather than rule 64, which spoke of amendments. As far as he was concerned the same proposal was being resubmitted.

66. Mr. YIMER said that rule 65 spoke of two or more proposals other than amendments, and clearly covered resolution L.16 rather than amendments to it.

67. Mrs. WARZAZI said that she was basing her proposal on rule 62, the first sentence of which she read out. She was therefore proposing a separate vote on the phrase in question. The inclusion of the United States of America among the countries listed in the phrase to be deleted was aimed precisely at avoiding selectivity.

68. A vote was taken by secret ballot on Mrs. Warzazi's proposal.

69. At the invitation of the Chairman, Mr. Guissé and Mr. Khalil acted as tellers.

70. Mrs. Warzazi's proposal was rejected by 12 votes to 11, with 2 abstentions.

71. Mr. MAMDOUHI (Observer for Iran) said that it was unfair to make a remark like the one made by Ms. Hampson about his country without first consulting the Government concerned and verifying the information. Young offenders in the Islamic Republic of Iran received special judicial treatment in the Centre for Correction and Education, which had separate quarters for temporary detention, correction imprisonment. Juveniles were separated in accordance with age, past criminal record and, as far as possible, type of offence. There was also a special section for female minors, and young people in all sections received education and training.

72. Article 22 of the Iranian Constitution protected the right to life, and capital punishment in Iran was limited to the most serious crimes and subject to the rules of due process. The information invoked concerning his country was outdated and insufficient. It had provided all necessary information on

the death penalty to the relevant mechanisms and cooperated closely with the Commission's Special Rapporteur on the human rights situation in Iran.

73. He agreed with other speakers that recent initiatives to include names of countries in thematic resolutions duplicated other thematic procedures and the work of the Commission, and was by nature selective. Before such a resolution was submitted, the State concerned should be given a chance to investigate and respond to allegations.

74. Ms. JANJUA (Observer for Pakistan) said that her country opposed the death penalty for young offenders. It was a party to the Convention on the Rights of the Child, and legislation was before Parliament to give effect to its obligations under the Convention. The Senate, in examining the text of the bill, had called for the minimum age for imposition of the death penalty to be raised to 18.

75. There had been no execution of a young offender in Pakistan in the past seven years. Shamoun Masih, who Amnesty International claimed had been 14 years old at the time of a capital offence, had actually been 18, according to government records. Thus sufficient grounds did not exist for the reference to Pakistan in the eighth preambular paragraph, and her delegation had hoped that the paragraph would be deleted from the text of the resolution. She also found it difficult to comprehend why the resolution arbitrarily took 1990 as a cut-off date. She wondered whether the inclusion of names in the eighth preambular paragraph served any purpose, especially with regard to countries in which legislation was already being enacted to remedy the situation.

76. Mr. AL-MADI (Observer for Saudi Arabia) said that the reference in the eighth preambular paragraph and the portions of the draft resolution which dealt with reports of extrajudicial execution in his country were completely unsubstantiated. Secondly, at a preceding meeting the secretariat had distributed a document which stated that a law existed in Saudi Arabia prohibiting the execution of a child under 10 years of age. That document was in conformity with the Islamic Shariah and legislation in force in Saudi Arabia. Thirdly, although Saudi Arabia's report to the Committee on the Rights of the Child would not be considered until January 2000, a copy had somehow reached the press, thereby distorting the procedure. Fourthly, the alleged execution of a juvenile had been considered by the Sub-Commission in 1995 and a decision had been taken at that time.

77. Ms. HAMPSON said that the sponsors of draft resolution L.16 had agreed to delete the eighth preambular paragraph.

78. A vote was taken by secret ballot on draft resolution E/CN.4/Sub.2/1999/L.16.

79. At the invitation of the Chairman, Ms. Motoc and Mr. Oloka-Onyango acted as tellers.

80. Draft resolution E/CN.4/Sub.2/1999/L.16 as a whole, as amended, was adopted by 14 votes to 5, with 5 abstentions.

81. Mr. LONG (Observer for the United States) said that his Government viewed the proceedings of the Sub-Commission under agenda item 2 with grave concern. The Sub-Commission's raison d'être must be to serve the needs of the Commission as defined by the Commission itself, notably in resolution 1999/81 and the report of the Bureau of the fifty-fourth session concerning rationalization of work. In resolution 1999/81, the Commission quite pointedly had not invited the Sub-Commission to expend its energy and resources on many of the resolutions and Chairman's statements which had been considered under item 2, and the Bureau's report contained a specific recommendation that the Sub-Commission should debate, but not entertain resolutions on, human rights violations in all part of the world. His Government fully accepted the need for the Sub-Commission to be independent and impartial, and considered it to be a valuable arm of the Commission, but only if it operated within the parameters set by the Commission and at a funding level appropriate for that purpose.

82. In speaking at a preceding meeting about the future tasks and working methods of the Sub-Commission, Mr. Eide had noted that the majority of members believed that the Sub-Commission's authority to adopt country or thematic resolutions not pending before the Commission should be used with restraint. Given the number and scope of the draft resolutions currently before the Sub-Commission, however, his delegation could not be optimistic about prospects for restraint. He also wondered what effect the experts anticipated the Sub-Commission's behaviour would have on the deliberations of the working group of the Commission which would be considering the question of reform of the Commission's mechanisms.

83. He recalled the contents of Commission resolution 1999/61 on the question of the death penalty, which made several references to the application of the death penalty to juveniles. His delegation had explained its position on the matter during the Commission debates and he would not repeat it. He wished only to say that capital punishment did not violate international law or any treaty to which the United States was a party, provided it was carried out with due process, which was assured by the United States legal system. Although many United States citizens favoured abolishing capital punishment, a majority supported its application for particularly heinous crimes. Should the people change their position, there was little question that the country's laws would follow suit.

84. In essence, draft resolution L.16 sought to supersede the Commission's pronouncement by appending the private opinions of the Sub-Commission sponsors. Not one of the 13 sponsors of draft resolution L.16 had made any attempt to discuss the text with his delegation, in violation of the Sub-Commission's own procedures. That could only mean that the experts saw themselves as unencumbered even by the operating guidelines of their own institution.

85. Finally, the Sub-Commission had flagrantly violated its mandate by purporting to address issues which the Charter of the United Nations entrusted to the Security Council. He also took strong exception to the fact that the Governments which had been directly implicated in the matter had not had the opportunity to put their views on record.

86. Mr. ALFONSO MARTINEZ said he utterly rejected the previous statement, which reflected a serious lack of respect for the Sub-Commission. It was most inappropriate to accuse the Sub-Commission of violating its mandate simply because Commission resolution 1999/61 did not specifically authorize it to take a step which it was in any event already authorized to take. He also failed to comprehend the reference to the Security Council, which was not mentioned in draft resolution L.16.

87. Mr. FAN Guoxiang said that he fully respected the position of the United States Government. If the statement had been made before the vote on L.16, it might have had a different impact.

88. Mr. JOINET recalling a previous Sub-Commission session at which the head of the United States delegation to the Sub-Commission had called a press conference to suggest that the Sub-Commission should be dissolved, said that it was reassuring to hear the representative of the United States speak of the Sub-Commission as a valuable arm of the Commission.

Draft resolution E/CN.4/Sub.2/1999/L.17

89. Ms. HAMPSON, introducing draft resolution E/CN.4/Sub.2/1999/L.17, said that in no fewer than five resolutions listed in the preamble, the Commission on Human Rights had called on Governments to ratify human rights treaties. The five States named in the resolutions had all ratified a human rights treaty and then sought to withdraw from the treaty or from a previously-accepted monitoring or enforcement mechanism, either generally or with regard to the death penalty, in the context of findings of serious human rights obligations by the treaty bodies. Unlike States such as Belarus, which were moving in the right direction by ratifying treaties, the five States named were moving in the opposite direction to what the Commission and Sub-Commission urged; that development must be discouraged. She noted that the Commission and Sub-Commission had included both international and regional human rights treaties in their appeals for ratification. The draft resolution took no position on whether withdrawals were lawful under the treaty in question. The issue of importance for the Sub-Commission was the promotion and protection of human rights, which were best effected through ratification of human rights treaties and were frustrated when States denied those under their jurisdiction protection which they had previously enjoyed.

90. Mr. ALFONSO MARTINEZ said he was concerned that a resolution such as L.17, which named specific countries, was necessarily selective and implied a negative value judgement on the countries in question. It also combined issues that were very different. Most seriously, it considered as a potential violator of human rights a sovereign State which exercised a right fully recognized under international law: the right to withdraw from a legal instrument to which it had previously agreed or to withdraw from, or cease to give effect to, a unilateral statement, as in the case of Peru.

91. As three separate issues were raised in connection with the States mentioned, he proposed that three votes should be taken: the first would concern situations relating to universal instruments, or the cases of the Democratic People's Republic of Korea, Jamaica, Guyana, and Trinidad and Tobago, covered in the eleventh, twelfth and thirteenth preambular paragraphs

and the corresponding operative paragraphs 4, 5 and 6. The second would concern Trinidad and Tobago's withdrawal from a regional obligation, covered in the fourteenth preambular paragraph and operative paragraph 6. The third vote would relate to the case of most concern to him, that of Peru's withdrawal from a unilateral statement, which was covered in the fifteenth preambular paragraph and operative paragraph 8.

92. Mr. YIMER said that it was unfair to specify in the resolution States which had acceded to human rights instruments and later withdrawn without mentioning States which had not acceded at all. He also wondered when, in Ms. Hampson's view, a State was justified in withdrawing from a human rights instrument: if the answer was "never", why had the right of withdrawal been included in those instruments?

93. Mr. GUISSÉ said that the question of reservations was linked to State sovereignty. States had the right to accede to international conventions, the right not to accede, and the right to withdraw. The question raised highly technical issues of international law, and he wondered whether the Sub-Commission was competent to consider it. States which denounced treaties must understand that they continued to be bound by the terms of the treaty during the notification period.

94. Mr. JOINET said that he had hesitated before joining the sponsors of draft resolution L.17 because of concerns about the Sub-Commission's competence to speak of regional instruments. However, as Commission resolution 1999/71 encouraged cooperation between United Nations bodies and regional human rights arrangements, he did not believe the Commission would object to the resolution including such arrangements.

95. Mr. SORABJEE said that he was not comfortable with draft resolution L.17. Even assuming that withdrawal from a human rights treaty was reprehensible, which he did not believe, was accession with a large number of reservations any less so? Those were matters for individual States to decide, especially with regard to optional protocols and the jurisdiction of regional courts. Moreover, the last preambular paragraph was far too broad in scope.

96. Ms. HAMPSON, replying to a question by Mr. Yimer, said that she had introduced draft resolution L.17 under agenda item 2 for two reasons. First, in all cases, the State concerned had withdrawn solely on account of an adverse finding by a monitoring mechanism; States generally did not withdraw when told they were doing everything right. Secondly, she had wished to accommodate the concern of Mr. Martínez, who had objected to resolutions naming countries under agenda items other than item 2. Concerning Mr. Yimer's reference to States which had not ratified human rights instruments, she noted that the resolution began by appealing strongly to States to ratify. As to competence, there was nothing in the resolution which stated the Sub-Commission's position as a matter of law. Its task was not to decide whether a body could withdraw from a particular treaty commitment as a matter of law, but to promote respect for human rights. Also important was the fact that the withdrawals targeted in the draft resolution were recent developments, which the Sub-Commission should recognize and seek to nip in the bud, especially as Commission resolution 1999/71 stressed very forcibly the desirability of ratifying international and regional human rights treaties.

97. Mr. FAN Guoxiang endorsed the remarks of Mr. Yimer, Mr. Guissé and Mr. Sorabjee. He did not think that withdrawal from a human rights instrument was synonymous with large-scale human rights violations. However, if the draft resolution was put to a vote, he would support Mr. Martínez's proposal for three separate votes. He was also concerned that the draft resolution used a thematic pretext to point a finger at certain countries.

98. Mr. GUISSÉ said that if the draft resolution was simply an appeal, as Ms. Hampson had stated, it might be preferable for it to take the form of a Chairman's statement rather than a resolution.

99. Mr. DIAZ URIBE, speaking as one of the sponsors of the draft resolution, said that its aim was simply to encourage those States which had withdrawn from human rights instruments to re-accede, and to stress that ratification enhanced rather than undermined sovereignty.

100. Mrs. WARZAZI considered that it had been a mistake to submit draft resolution L.17 under agenda item 2. Secondly, quite apart from the question of State sovereignty, regional instruments were not within the Sub-Commission's realm; it was for the State parties to those instruments to address the issue of withdrawals.

The meeting rose at 9 p.m.